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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/474,043	12/28/1999	OOMMAN PAINUMOOTIL THOMAS		1780

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EXAMINER	
WATKINS III, WILLIAM P	
ART UNIT	**PAPER NUMBER**
1772	10

DATE MAILED: 06/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

MF-10

Office Action Summary	Application No.	Applicant(s)	
	09/474,043	THOMAS ET AL.	
	Examiner	Art Unit	
	William P. Watkins III	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 March 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *33-64* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *33-64* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. The amendment filed 12 July 2000 called for all of the pending claims (1-32) to be canceled and new claims 1-29 to be entered. Rule 37 CFR 1.126 prohibits the substitution of a new claim for a canceled claim. Claims 1-29 in the paper filed 12 July 2000 have been renumbered as claims 33-61. New claims 30-32 in the paper filed 25 March 2002 have been renumbered as claims 62-64. The claims amended in the paper filed 25 March 2002 have been renumbered to be consistent with the renumbered claims in the 12 July 2000 amendment.

2. Claims 33-64 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claims have been amended to call for the foam to be "essentially polystyrene free". It is not clear where this limitation is supported in the original specification. At the top of page 11, the instant specification recites that the foam

may contain elastomeric copolymers, which contain "polystyrene". A "styrenic moiety", which is a "polymer", is recited in instant claim 35. The examiner takes this as a type of polystyrene. It is thus unclear where the new limitation of "essentially polystyrene free" is supported.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 33-45, 52-57, and 61-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry (U.S. 4,414,970) in view of Miller (U.S. 5,840,632).

Berry teaches the use of an elastomeric film on a fabric substrate in a personal care article with one embodiment of the film being permeable and microporous (col. 2, lines 40-55). Miller teaches the formation of microporous elastomeric films, which may be comprised of styrenic tri-block polymers by the use of blowing agents (col. 4, lines 30-60). The instant invention

claims the use of a microporous permeable film on a fabric substrate where the film has been made by use of a blowing agent and may comprise styrenic tri-block polymers. It would have been obvious to one of ordinary skill in the art to have made the porous elastomeric films of Berry using blowing agents and styrenic block polymers because of the teachings of Miller that a blowing agent and these materials can be used to produce porous elastomeric films. Berry teaches an elastic strain before break of at least 100%, with no mandatory maximum upper limit specified. The instant elongation at break of 300% to 600% is taken as being obvious over this disclosure. Berry also teaches the use of a nonwoven fabric in combination with the permeable film. A spunbonded nonwoven is instantly claimed. Spunbonding is a common method of forming nonwoven materials and would have been obvious to use by one of ordinary skill in the art. The process of foaming of Miller uses the same blowing agent and conditions as the process of the instant disclosure and is thus presumed to have a similar amount of open and closed cells as the instantly claimed product.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claims 33-45, 53 and 61 are rejected under 35 U.S.C. 102(a and e) as being anticipated by Miller (U.S. 5,840,632).

See col. 4, lines 30-60. The reference teaches elastomeric films made with blowing agents.

7. Claims 58-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry in view of Miller as applied to claims 33-45, 52-57 and 61-64 above, and further in view of Shah et al. (U.S. 5,786,412).

Berry in view of Miller teaches an elastomeric microporous film on a substrate as noted above. Shah et al. teaches the use of polyurethanes to made elastomeric films as well as styrenic triblock polymers. The instant invention claims a polyurethane

based elastomeric foam. It would have been obvious to one of ordinary skill in the art to substitute polyurethane for the styrenic components of Berry in view of Miller because of the teachings of Shah et al. that polyurethane makes a layer similar to that of styrene based elastomers.

8. Claims 46-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry in view of Miller as applied to claims 33-45, 52-57 and 61-64 above, and further in view of Cheong (U.s. 5,571,529).

Cheong teaches the use of various topical medicinal substances in a foam layer that is in contact with skin (col. 3, lines 50-65). The instant invention claims the storage of and release of various active agents in a microporous elastomeric layer. It would have been obvious to one of ordinary skill in the art to have used a topical medicine or other active substance in the microporous bandage layer of Berry in view Miller in order to deliver an active substance to a user's skin layer because of the teachings of Cheong.

9. Applicant's arguments filed 25 March 2002 have been fully considered but they are not persuasive.

Regarding Berry, as noted in the above rejection, a bandage having elastic strain greater than 100% is taught. Applicant also argues that the examples in the reference limit the broader teachings in the body of the specification of the reference. The position of the examiner is that the examples are just examples of the teachings of the reference and not limitations on the scope of the disclosure of the reference. Regarding Miller, the instant specification does not exclude polystyrene as noted above. Regarding Shah et al., the examiner does not rely on the reference for a teaching of porosity. Applicant's argument regarding closed cells is discussed in the above rejections.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action

is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 703-308-2420. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

WW/ww
June 14, 2002

William P. Watkins III

WILLIAM P. WATKINS III
PRIMARY EXAMINER